

Pietrangelo v OPC, LLC
2021 NY Slip Op 33506(U)
March 3, 2021
Supreme Court, Westchester County
Docket Number: Index No. 54783/2019
Judge: Linda S. Jamieson
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To commence the statutory time period for appeal of right (CPLR § 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

Disp _____ Dec x Seq. No. 1 Type SJ

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

PRESENT: HON. LINDA S. JAMIESON

-----X

MARCO PIETRANGELO,

Index No. 54783/2019

Plaintiff,

DECISION AND ORDER

-against-

OPC, LLC AND CHRISTOPHER O'CONNOR,

Defendants.

-----X

The following papers numbered 1 to 4 were read on this motion:

<u>Paper</u>	<u>Number</u>
Notice of Motion, Affidavit, Affirmation and Exhibits	1
Memorandum of Law	2
Affirmation and Exhibits in Opposition	3
Reply Affirmation	4

OPC, LLC, the remaining defendant, brings its motion for summary judgment seeking to dismiss this personal injury action. The facts are as follows: plaintiff was living in an apartment in the building next door to the one owned by defendant. He was not on the lease, but was living in the apartment because one of the tenants in that apartment was his friend. On Easter Sunday, plaintiff decided at the last minute to stay with his roommates and have Easter dinner at their place. He began to clean up the backyard. It appears, from the photos submitted as exhibits to

the Court, that the backyard of plaintiff's building flowed into the backyard of the building next door, without anything to demarcate where one ended and the other began.

After tidying up the area directly outside their screened-in porch, plaintiff decided to venture further into the backyard. He saw a plastic shopping bag on a retaining wall, and went to retrieve it. He stepped on a rock on the ground so that he could reach the bag. He slipped and fell, and injured himself on a ladder that was laying sideways on the ground. He testified at his deposition that the ladder was not obvious, although it is readily visible in the photos submitted as exhibits on this motion. There is no dispute, however, that these photos were not taken contemporaneously with plaintiff's accident.

Plaintiff initially sued the owners of the building in which he lived. That action was dismissed, when defendants therein submitted evidence demonstrating that they did not own or control the spot on which plaintiff had his accident. He then commenced this action.

Defendant argues that it is not liable for the accident because plaintiff was actually trespassing on their property; they never asked plaintiff to clean up the area; they had no actual or constructive knowledge about the debris in the area; and that any hazard was open and obvious. "To demonstrate its entitlement to summary judgment in a slip-and-fall case, a

defendant must establish, prima facie, that it did not create the condition that allegedly caused the fall, and did not have actual or constructive notice of that condition for a sufficient length of time to remedy it." *Oliveri v. Vassar Bros. Hosp.*, 95 A.D.3d 973, 974-75, 943 N.Y.S.2d 604, 605 (2d Dept. 2012).

The Court addresses each argument raised by movant. First, it is entirely unclear that the area in which plaintiff fell was owned by defendant, and not part of the backyard of the building next door. Indeed, so convinced was plaintiff that this spot belonged to the owners of the building in which he lived that he initially sued them first. A review of the photographs does not reveal that there was any demarcation between the two properties at all. Moreover, there was ample testimony that indicated that (1) various people passed through the backyards as a way to walk from one property to another; and (2) there had been parties in the backyard(s). Although these parties were not authorized by the owners of either neighboring building, the fact that the backyards were used for gatherings does not indicate that they were off-limits to plaintiff or anyone else.


Next, the evidence suggests that the ladder(s) and other debris had been in the backyard since before defendant owned the premises. It is thus hard to believe that defendant had no actual or constructive knowledge of that debris; presumably, defendant inspected the property prior to purchasing it, if not

since. *Park v. Caesar Chemists, Inc.*, 245 A.D.2d 425, 426, 666 N.Y.S.2d 679, 680 (2d Dept. 1997) ("It was also incumbent on Jameco, as movant, to show lack of constructive notice, in that the condition which caused the accident was not visible or apparent for a sufficient length of time to permit Jameco, in the exercise of reasonable care, to remedy the defect."). The Court also rejects defendant's argument that the debris was open and obvious; the only testimony suggests that this was not the case. The photographs showing the debris were not taken contemporaneously with the accident, and thus do not help defendant.

The Court thus cannot conclude, on this evidence, that there are no questions of fact. Accordingly, the motion is denied.

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York
March 3, 2021


HON. LINDA S. JAMIESON
Justice of the Supreme Court

To: Cellino Law, LLP
Attorneys for Plaintiff
420 Lexington Ave., #830
New York, NY 10170

Robert A. Peirce & Associates
Attorneys for Defendant OPC, LLC
8 Cottage Place
White Plains, New York 10601